June 3, 2016

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Robert deV. Frierson, Secretary
Docket No. R—1534; RIN 7100 AE-48

Re: Comments in Response to the Notice of Proposed Rulemaking – Single-Counterparty Credit Limits for Large Banking Organizations

Ladies and Gentlemen:

I. Introduction

The Structured Finance Industry Group ("SFIG")[1] appreciates the opportunity to comment on the notice of proposed rulemaking (the "NPR") by the Board of Governors of the Federal Reserve System (the "Federal Reserve") implementing single-counterparty credit limits ("SCCL") for domestic and foreign bank holding companies with total consolidated assets of $50 billion or more (collectively, "Covered Companies").[2] The Proposed Rule would implement Section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the Federal Reserve to prescribe standards that limit "the risks that the failure of any individual company could pose" to such a bank holding company or to a systemically important nonbank financial company.

The Proposed Rule takes an approach to determining counterparty limits for special purpose vehicles that is substantially different from the approach taken in the Federal Reserve's initial 2011 proposed SCCL rulemaking (the "2011 Proposal"). More specifically, for Covered Companies with total consolidated assets of $250 billion or more or $10 billion or more of on-balance sheet foreign exposures ("Larger Covered Companies"), the Proposed Rule mandates the use of a "look-through approach" for identifying counterparties in connection with exposures to securitization

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[1] SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

[2] 81 Fed. Reg. 14328 (March 16, 2016). The introduction and commentary included in the NPR are referred to herein as the "Preamble," and the proposed rule set forth in the NPR is referred to herein as the "Proposed Rule."

funds, investment funds and other special purpose vehicles (collectively, "SPVs"). In contrast, the 2011 Proposal contemplated that a look-through approach for determining counterparties in securitization transactions would have been at the Federal Reserve's discretion, or only imposed where there was substantial risk of a concentrated exposure to an underlying issuer (the example given in the 2011 Proposal being a transaction where the number of exposures in the transaction was 20 or fewer). The Federal Reserve indicates in the Preamble that in part these changes are being proposed so that the methodology for determining counterparty limits for exposures to SPVs would more closely match the approach taken in the Large Exposure Framework promulgated by the Basel Committee on Banking Supervision (the "Basel Large Exposure Framework").[3] Our comments are limited to the impact of the Proposed Rule on securitization SPVs.

The Proposed Rule also requires Larger Covered Companies to identify third parties whose failure or financial distress would likely result in a loss in the value of the Covered Company's investment in the SPV, and to recognize an exposure to the relevant third party in an amount that is equal to the amount of the Covered Company's investment in the SPV. A broad list of potential third parties is set forth in the Proposed Rule and the Preamble that includes protection providers, liquidity providers, asset originators, and fund managers.

The stated goals of the Federal Reserve in adopting the look-through approach are to avoid understating counterparty exposures to underlying issuers of assets held by SPVs while at the same time not creating an approach to identifying such exposures in cases where these underlying exposures are "insignificant" and the requirement to identify these exposures could be "unduly burdensome."[4] Our members support these goals and agree that it would be prudent to assure to the extent practicable that exposures to underlying asset issuers in securitizations of the magnitude proposed would count toward consolidated counterparty exposures that Larger Covered Companies have to these issuers. Our members are of the view, however, that substantial revisions to the provisions of the Proposed Rule that affect securitization transactions would need to be made in order for the Federal Reserve to achieve its goals and not inadvertently reduce important sources of financing for U.S. companies and consumers provided by our members that are Larger Covered Companies.

We note at the outset that the issues our members have with the look-through provisions of the Proposed Rule are largely *procedural rather than substantive*. Our members are confident that the vast majority of securitization transactions in which they have exposures contain only underlying issuer exposures that would not materially add to the counterparty risk of Covered Companies to such underlying issuers. The application of the proposed look-through approach in light of the type and frequency of information necessary to comply with its provisions on a daily basis, however, would result in an overstatement of counterparty risk in many if not most of these transactions. As proposed, these provisions could prove unworkable for many types of exposures and securitization transactions and would result, primarily through the single unknown counterparty concept that is part of the look-through approach, in a very large

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[3] Basel Committee on Banking Supervision, Supervisory Framework for Measuring and Controlling Large Exposures (April 2014).

[4] 81 Federal Register 14328, at 14342.

counterparty exposure where no meaningful correlated counterparty risk would exist using the substantive standards for determining the same that the Federal Reserve sets out in the NPR. We are confident that this is not the outcome that the Federal Reserve is seeking to achieve.

Our members also have substantive concerns with regard to the third party counterparty recognition provisions of the Proposed Rule. As written, these provisions cannot be operationalized by Covered Companies due to the unlimited types of third parties potentially covered by the Proposed Rule and the related difficult subjective judgment required to determine whether a third party's financial distress could adversely impact a Covered Company's securitization exposure.

Several of our comments refer to and suggest changes consistent with the provisions of the Basel Large Exposure Framework and the Regulatory Technical Standards for implementing its large exposures regime (the "EBA Technical Standards") of the European Banking Authority ("EBA").[5] Many of our members will be required to comply with these separate large exposure regimes in addition to the Federal Reserve's SCCL rule and believe that regulatory consistency is vital.

Our members suggest the following modifications to the provisions of the Proposed Rule that impact securitization transactions in order to address their concerns:

1. The Federal Reserve should clarify when the look-through approach is intended to apply. At most, the look-through approach should apply only to equity investments in SPVs and to credit and liquidity facilities provided to SPVs.

2. An exemption from the look-through approach should be provided where it is clear that the types of underlying asset issuers or diversification of the underlying exposures are such that no significant underlying counterparty risks are present.

3. An exemption from the look-through approach should be provided for senior, investment grade securitization exposures.

4. In revolving securitization transactions, Larger Covered Companies should be permitted to rely on credit concentration limits for determining whether the credit exposure to an underlying asset issuer could exceed the 0.25% of tier 1 capital threshold.

5. Application of the look-through approach should be required only when the Larger Covered Company first acquires its exposure and (i) on asset addition dates in

[5] European Banking Authority, EBA Final Draft Regulatory Technical Standards, On the determination of the overall exposure to a counterparty or connected counterparties in respect of transactions with underlying assets under Article 390(8) of Regulation (EU) No 575/2013 (Dec. 5, 2013).

connection with amortizing securitization transactions, and (ii) in connection with periodic reporting dates with respect to revolving securitization transactions.

6. Application of the look-through approach should only be required with respect to underlying asset issuers that exceed the 0.25% of tier 1 capital threshold and not with respect to all underlying asset issuers in such transactions.

7. It should be clarified that only unidentified asset issuers in a transaction should be assigned to the "unknown counterparty" and not all exposures in the relevant transaction.

8. Assigning all unidentified exposures to a single unknown counterparty across SPVs would create potential compliance issues for Larger Covered Companies without evidence of correlation of credit risk across these transactions. The Federal Reserve should consider changes to address this issue that could include requiring Larger Covered Companies to create separate unknown counterparties for groups of unidentified asset issuers where a correlation risk exists.

9. A Covered Company should only be required to recognize third party counterparty exposures in securitization transactions where the third party provides credit or liquidity support to the transaction and such exposure should not exceed the maximum amount of the loss that the Covered Company could suffer as a result of the relevant third party's distress.

10. The third party exposure requirement should be subject to the same de minimis exclusion as the look-through requirement.

11. Covered Companies should not be required to recognize third party counterparty exposures where the third party is an affiliate of the SPV.

12. SPVs should not be treated as affiliated counterparties where such affiliation is only through common ownership by or accounting consolidation with an entity (x) whose primary line of business is owning equity interests in special purpose entities, (y) whose activities with respect to the SPV are limited to providing management or administrative services, and (z) that does not originate any of the underlying assets of the SPV.

13. Multiple, overlapping exposures to an SPV in a single securitization transaction should not be counted more than once in determining the amount of a Covered Company's exposure to the SPV.

14. Our members intend to continue to treat (i) liquidity facilities provided in ABCP conduit transactions as creating counterparty exposures to the underlying transaction-level SPV and not exposures to the ABCP conduit, and (ii) program-wide credit facilities (other than those which also serve as liquidity facilities) provided to ABCP conduits as counterparty exposures to those conduits.

15. The proposed one-year implementation period for Larger Covered Companies should be extended to a minimum of two years.

II. Discussion

1. The Federal Reserve should clarify when the look-through approach is intended to apply. At most, the look-through approach should apply only to equity investments in SPVs and to credit and liquidity facilities provided to SPVs.

It is not clear which relationships that a Larger Covered Company has with an SPV are intended to be covered by the look-through approach. Section 252.75(a)(2) of the Proposed Rule would imply that the look-through approach would apply to SPVs in which a Larger Covered Company "invests." This would suggest that the look-through approach does not apply to other types of relationships. Other language in the Proposed Rule and the Preamble would suggest that the look-through approach would apply to the full range of exposures that constitute "credit relationships" under the NPR.

In either event, our members are of the view that at most, the look-through approach should apply to cash investments in SPVs and synthetic investments that mirror such cash investments that are held in the banking book and to credit and liquidity facilities, regardless of their form, extended by Covered Companies to SPVs. Other types of exposures do not present the risk of significant exposures to underlying issuers that we believe led the Federal Reserve to propose the look-through approach.

If the look-through approach is not further limited as described above, it will be necessary for the Federal Reserve to provide for several exemptions to the look-through approach for exposures that both do not present significant risks as described above and do not lend themselves to a practical application of the approach, due to either their temporary nature or the nature of the relationship of the Larger Covered Company with the SPV. For example, Larger Covered Companies that are actively engaged in the asset-backed securities markets will have temporary credit exposures to SPVs through their underwriting, market making, payment, clearing and settlement activities. Compliance with the look-through approach for these exposures would be both operationally difficult and unnecessary given the short-term nature of the risk taken. Exposures held in connection with such activities therefore should be exempted from the look-through approach.

Larger Covered Companies also engage in fiduciary, agency, custodial and operational activities that may result in temporary advances of funds to a securitization SPV. Such advances would generally be repayable in full on a priority basis from asset cash flows on the next distribution date for such cash flows. There is a minimal chance that these temporary exposures will ever lead to the type of significant ongoing credit exposure to an underlying asset issuer that we believe the look-through approach is designed to capture. These activities should therefore be exempted from the look-through approach.

2. An exemption from the look-through approach should be provided where it is clear that the diversification of the underlying exposures or the types of underlying asset issuers are such that no significant underlying counterparty risks are present.

Given the significant operational burdens of implementing the look-through approach, its application should be limited to situations where a material exposure to an underlying asset issuer would exist. The Federal Reserve proposed in the alternative in the 2011 Proposal that a securitization transaction would need to have fewer than 20 exposures for the look-through approach to apply. Our members believe that imposing this sort of threshold would better balance the concern that Larger Covered Companies identify significant exposures to underlying asset issuers against the burdens that the look-through approach would impose.

Absent the modification proposed above, certain securitizations of assets that do not present any reasonable possibility of significant counterparty exposures should be categorically exempted from the look-through approach. Where the underlying asset obligors of a securitization SPV are natural persons or small and medium-sized enterprises, there is no practical likelihood that the amount of the exposure would be "significant" under the Proposed Rule and therefore the burden of complying with the look-through approach for these transactions would not be justified. More specifically, the following categories of assets should be exempted:

a. Securitizations of retail receivables (for example, credit cards, auto loans and leases, and residential mortgages).

b. Securitizations of receivables of small and medium-sized enterprises (for example dealer floor plan loans, equipment loans and leases, and trade receivables).

c. Commercial mortgage loan securitizations, given the nature of the underlying collateral for these loans (rental streams and real property) and the small likelihood of overlap with other credit exposures of the Larger Covered Company.

3. An exemption from the look-through approach should be provided for senior, investment grade securitization exposures.

Significant levels of credit enhancement and other structural elements protect high credit quality, senior securitization exposures against the risk of loss. As a result, actual credit exposures to underlying asset issuers for Larger Covered Companies holding these exposures are not equivalent to holding a direct exposure to these issuers. Further, issuer concentrations are a specific factor in determining the amount of credit enhancement for securitization transactions, and as a consequence, credit enhancement will in many cases directly mitigate the concentration risk to underlying asset issuers. In view of these protections, the default of any one underlying obligation is highly unlikely to result in a loss in the value of the senior securitization exposure.

In addition, the risk-based capital regulations adopted by the U.S. banking regulators broadly recognize the loss absorbing capacity of, and credit enhancement provided by, more junior tranches of securitizations, and thus deem a relatively senior securitization exposure to be less

risky than a more junior exposure. For example, the simplified supervisory formula approach for risk weighting securitization exposures was designed to apply "relatively higher capital requirements to the more risky junior tranches of a securitization that are the first to absorb losses, and relatively lower requirements to the most senior exposures."[6]

Accordingly, we propose an exemption from the look-through approach where: (i) the Larger Covered Company's exposure is senior (i.e., the tranche has a detachment point of 100 percent under the risk-based capital rules) and is in the form of debt, and (ii) the Larger Covered Company has determined that its exposure is "investment grade" within the meaning of the risk-based capital rules (i.e., the issuer has adequate capacity to meet its financial commitments, the risk of default is low, and the full and timely repayment of principal and interest is expected).[7]

4. In revolving securitization transactions, Larger Covered Companies should be permitted to rely on credit concentration limits for determining whether the credit exposure to an underlying asset issuer could exceed the 0.25% of tier 1 capital threshold.

Application of the look through approach could be particularly problematic for our members with respect to securitizations of revolving pools of assets. In these transactions, securitized assets are added to the relevant pool as frequently as daily without, in some cases, additional credit being extended or investment being made by the Larger Covered Company. While in many cases Larger Covered Companies may currently receive relevant asset issuer information on a periodic basis, this information is only a snapshot as of a specific reporting date, which often lags the date on which the report is delivered to the Larger Covered Company and may not reveal the identities of all underlying obligors. Because of these realities, Larger Covered Companies cannot identify asset issuers on a daily basis that might exceed 0.25% of tier 1 capital.

The legal documentation for these transactions, however, would almost always contain safeguards to assure against the risk that the amount of credit extended by a Larger Covered Company could exceed a specified amount against the underlying asset of any underlying issuer or group of underlying issuers. More specifically, Larger Covered Companies would typically impose "concentration limits" in these transactions that would limit the amount of credit extended against the receivables of a single affiliated group of underlying issuers to a specified percentage of the size of the overall asset pool.

Our members request that when these concentration limits have been imposed, Larger Covered Companies specifically be permitted to use these limits to determine whether the amount of an underlying exposure in these transactions exceeds the 0.25% of tier 1 capital threshold above which the look-through approach would apply. We believe this to be a practical solution that

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6 78 Federal Register 62119 (October 11, 2013).

7 12 CFR §217.2.

achieves the Federal Reserve's goals while at the same time reducing the administrative burden on Larger Covered Companies for securitization transactions in which there is no meaningful possibility that the Larger Covered Company is extending credit to an underlying issuer in an amount that the Federal Reserve views as significant.

5. ***Application of the look-through approach should be required only when the Larger Covered Company first acquires its exposure and (i) on asset addition dates in connection with amortizing securitization transactions and (ii) in connection with periodic reporting dates with respect to revolving securitization transactions.***

As described above, for most securitizations, information made available to the Larger Covered Company with respect to underlying assets is not available on a real time basis from issuers or servicers. For example, for many securitizations a "cut off date" is established to identify pool assets at the outset of a transaction. Issuers and servicers will generally not themselves have completely current information with respect to assets that could be eligible to be sold into securitizations. Similar cut-off dates are used for reporting asset additions in relevant transactions. Finally, in revolving transactions, periodic reports regarding the composition of asset pools normally provide information regarding those assets as of period end dates (e.g. calendar months) that end a number of days prior to the delivered report. Moreover, in these transactions, Larger Covered Companies generally do not receive any information regarding changes in composition of asset pools between reporting dates and asking securitizers to provide such real time information would be impractical.

Market practice and regulatory disclosure requirements do not require that information regarding the underlying assets in securitization transactions be made available to investors on a daily basis.[8] In addition, due among other things to privacy concerns, disclosure regulations do not mandate that the identity of all asset issuers in public securitization transactions be made available to investors. Further, as of the date of this letter, Securities and Exchange Commission Regulation AB II does not mandate the disclosure of asset level information with respect to many common securitized asset types (although such disclosure is still under consideration).

Our members request that the look-through approach in the final SCCL rule be clarified to accommodate these market realities. Specifically providing that a look-through is required only when new information about an asset pool is available both works with existing practice and

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[8] SEC Regulation AB only requires periodic disclosure of obligors that represent 10% or more of the relevant asset pool. 17 CFR sections 1101(k) and 1112. For relevant asset classes, SEC Regulation AB II requires issuers to provide asset-level disclosures concurrent with Form 10-D filings, which are tied to the distribution dates for the relevant securitization transaction.

The final credit risk retention regulations also permit the use of information as of "cut off dates" and based upon periodic reports. Section 4(c)(1)(f) of the credit risk retention regulations provides that the limited determination of the fair value of a securitizer's horizontal residual interest may be determined based on information that is as of a date up to 60 days prior to the date of first use with investors, except in the case of a securitization transaction that makes distributions to investors on a quarterly or less frequent basis, in which case such information may be as of a date up to 135 days prior to the date of first use with investors. Section 5(c)(4) of the risk retention regulations requires determination of the 5% seller's interest requirement for revolving pool securitizations on a monthly basis.

seems sufficiently conservative given the small chance that any securitization for which a Larger Covered Company has an exposure would exceed the 0.25% of tier 1 capital threshold in the Proposed Rule.

The EBA has taken a practical approach to this issue in the EBA Technical Standards. While compliance with the EBA large exposure limits is required at all times, the EBA Technical Standards would permit a covered institution to monitor the exposures on a periodic basis.[9] For "dynamic" underlying asset portfolios, EBA would view a covered institution to be in compliance with its rules as long as the institution monitored the composition of these pools at least monthly.[10]

6. Application of the look-through approach should only be required with respect to underlying asset issuers that exceed the 0.25% of tier 1 capital threshold and not with respect to all underlying asset issuers in such transactions.

The Basel Large Exposure Framework would not require a look-through to each underlying asset issuer to an SPV where not all of the exposures to the SPV exceed the 0.25% of tier 1 capital threshold. Instead, only underlying exposures above the threshold would be treated as separate counterparties.[11] The EBA has taken the same approach in the EBA Technical Standards.[12] Our members request that the Federal Reserve adopt this same approach (i) for international consistency, given that many of our members are FBOs that will also need to comply with international standards, (ii) to reduce the operational burden on Larger Covered Companies in applying the look-through approach, and (iii) since it is consistent with the adoption by the Federal Reserve of the 0.25% threshold as being the level below which exposures are not likely to produce additional material counterparty risks to underlying issuers.

7. It should be clarified that only unidentified asset issuers in a transaction should be assigned to the "unknown counterparty" and not all exposures in the relevant transaction.

We believe that the Federal Reserve intended that in a transaction where some but not all of the issuers of underlying assets can be identified, that only exposures to unidentified issuers should be added to a Larger Covered Company's "unknown counterparty" exposure. We also believe, however, that the language of Section 252.75 of the Proposed Rule could be read to require that *all* exposures in the relevant transaction, including the exposures to identified issuers, be

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9 EBA Technical Standards, Article 6(4).

10 EBA Technical Standards, page 58.

11 Basel Large Exposure Framework, Section 74.

12 EBA Technical Standards, Article 6(2).

included.[13] We ask that the language of the final rule be modified to remove this ambiguity. We note that this clarification would be consistent to the approach taken by the EBA to this issue in Article 6(2) of the EBA Technical Standards.

8. Assigning all unidentified exposures to a single unknown counterparty across SPVs would create compliance issues for Larger Covered Companies without evidence of correlation of credit risk across these transactions. The Federal Reserve should consider changes to address this issue that could include requiring Larger Covered Companies to create separate unknown counterparties for groups of unidentified asset issuers where a correlation risk exists.

As discussed above, our members that are Larger Covered Companies are confident that the vast majority of securitization transactions in which they invest or extend credit do not contain exposures that exceed the 0.25% of tier 1 capital threshold imposed in the Proposed Rule. If the changes our members have requested to the look-through approach described above are not made, additions to the unknown counterparty exposure will become the norm, rather than the exception, in connection with many transactions with little correlation to the regulatory objective of identifying actual significant counterparty concentrations.[14] Providing that the unidentified exposures across all securitization transactions (and all other exposures to SPVs) are aggregated as a single counterparty exposure would unnecessarily restrict investment in and credit to securitization transactions that fund the real economy, with no evidence of correlated credit risk across these transactions. For example, there is no possibility that the issuers of underlying assets in a securitization transaction of retail exposures are the issuers of underlying assets in a securitization of wholesale exposures. The Federal Reserve should consider changes to the Proposed Rule that would address this issue. Such changes should include an exclusion from the requirement to add an unidentified exposure to the single unknown counterparty where it can be established that the amount of the exposure to the unidentified counterparty does not exceed 0.25% of the Larger Covered Company's tier 1 capital. Such changes could also include creating separate unknown counterparties for separate securitization asset classes or types of underlying issuers.[15]

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[13] Section 252.765(b)(2) of the Proposed Rule provides that if a Covered Company "Is unable to identify each issuer" of assets held by an SPV, the "gross exposure" must be attributed to a single unknown counterparty (emphasis added).

[14] This could effectively cap the amount of securitization credit exposure of Larger Covered Companies for a substantial portion of their securitization business to something less than 25% of tier 1 capital. This issue is compounded by the fact that unidentified asset issuers of *non securitization* SPVs would also be aggregated into the single unknown counterparty.

[15] The approach taken by the EBA in the EBA Technical Standards recognizes that not all exposures where the underlying asset issuer cannot be identified represent exposures that should be aggregated into a single exposure. Article 6(2) of the EBA Technical Standards provides a three-step process for assigning unknown exposures. First, if the exposure value does not exceed 0.25% of eligible capital, then the exposure is assigned to the transaction as a separate counterparty. Second, where the exposure exceeds 0.25% of eligible capital, if the institution can ensure, by means of the mandate of the transaction, that the underlying exposures are not connected with the underlying exposures in the institution's portfolio (including underlying exposures from other SPV transactions), then the exposure is also assigned to the transaction as a separate counterparty. Third, only if the above are not true, the exposure is assigned to the institution's single unknown counterparty.

9. A Covered Company should only be required to recognize third party counterparty exposures in securitization transactions where the third party provides credit or liquidity support to the transaction and such exposure should not exceed the maximum amount of the loss that the Covered Company could suffer as a result of the relevant third party's distress.

As drafted, the requirement to recognize third party exposures whose failure or financial distress would likely result in a loss in the value of a Covered Company's investment in, or exposure to, a securitization SPV is overly broad and is unworkable for our members. The universe of third parties that a Covered Company would be required to cover is unlimited and there is not necessarily any correlation between the level of potential loss that could be suffered and the amount of the required exposure (which equals the full amount of the Covered Company's securitization exposure under all circumstances).

The Proposed Rule is designed to limit *credit* exposures to unaffiliated counterparties. The Pillar 2 supervisory process in place for Covered Companies already addresses other types of risk, such as fraud risks and operational risks, and Covered Companies have policies in place to measure these risks. The Pillar 2 supervisory process gives bank regulators adequate tools to address a Covered Company's deficiencies in protecting against these risks. Our members therefore request that the requirement to recognize third party counterparty exposures be limited to third parties providing credit or liquidity support, regardless of form, to the relevant securitization transaction.

The amount of the counterparty exposure to a third party should also be limited when appropriate and should not automatically be sized at the amount of the Covered Company's gross exposure to the related SPV as required by the Proposed Rule. Where, for example, four unaffiliated third parties each provide a 25% credit guarantee of a securitization transaction, the amount of the exposure recognized to each third party should be limited to the 25% maximum credit exposure and should not equal the entire amount of the Covered Company's securitization exposure.

10. The third party exposure requirement should be subject to the same de minimis exclusion as the look-through requirement.

In proposing the look-through approach, the Federal Reserve recognized that where a Covered Company's securitization exposure does not itself exceed 0.25% of tier 1 capital, the look-through approach should not apply. A similar exception should apply to the requirement to identify third parties for exposures of this size. Where the entire size of a securitization exposure is not above the minimum exposure amount that the Federal Reserve views as significant, the level of third party risk that may be present in the related transaction would not warrant the creation of a separate counterparty exposure.

11. Covered Companies should not be required to recognize third party counterparty exposures where the third party is an affiliate of the SPV.

Many of the third parties described in the Preamble and the Proposed Rule would be affiliates of the SPV counterparty in typical securitization transactions. For example, it is common for the asset originator and initial servicer in a securitization transaction to be affiliates of the issuing SPV. Given that the SPV exposures in these transactions would already be aggregated with those other entities under the definition of "counterparty" in the Proposed Rule, adding an additional counterparty exposure to these entities would be double counting the risk to such an affiliated group. The maximum amount that the Covered Company could lose as a result of the credit or other risks to that counterparty group would be the amount of the securitization exposure. The final rule should be adjusted to exclude entities that would be treated as a single counterparty with the SPV from the requirement to identify third party exposures.

12. SPVs should not be treated as affiliated counterparties where such affiliation is only through common ownership by or accounting consolidation with an entity (x) whose primary line of business is owning equity interests in special purpose entities, (y) whose activities with respect to the SPV are limited to providing management or administrative services, and (z) that does not originate any of the underlying assets of the SPV.

It is also common in securitization transactions for entities that are in the business of owning equity interests and providing management services to SPVs to own the voting equity in SPVs for otherwise completely unrelated securitization transactions. For example, the voting equity of asset-backed commercial paper (ABCP) conduits is typically owned not by the ABCP conduit sponsor, but by an unaffiliated third-party that is in the business of owning such entities and that provides certain routine management services to the ABCP conduit but otherwise contributes no assets to and provides no meaningful financial or other support to the ABCP conduit. Many of these third party entities hold the voting equity in hundreds of otherwise unaffiliated SPVs. It would serve no meaningful purpose to treat such SPVs as affiliated counterparties for purposes of the final rule. Our members therefore request that the final rule be modified to provide that SPVs should not be treated as affiliated counterparties where such affiliation is only through common ownership by or accounting consolidation with an entity (x) whose primary line of business is owning equity interests in special purpose entities, (y) whose activities with respect to the SPV are limited to providing management or administrative services, and (z) that does not originate any of the underlying assets of the SPV.[16]

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[16] This proposed exclusion is derived from Section (d)(1)(F) of SEC Rule 2a-7. Rule 2a-7 requires that the affiliated entities be aggregated as single issuers for purposes of issuer diversification limits imposed on money market funds pursuant to the Rule. In providing for this exception, the SEC indicated that the purpose of its affiliation requirement was to limit money market funds from assuming a concentrated amount of risk of a common economic enterprise, and "not to limit the exposure to entities that might fall under the definition of 'affiliated' but are otherwise independent and not part of a common economic enterprise." 79 Federal Register 47736, 47870 (August 14, 2014). We believe that the purpose of the Proposed Rule is substantially similar and therefore that a similar exception is warranted. We note, however, that the exception granted in Rule 2a-7 was limited to ABCP conduits due primarily, we believe, to the purpose of the Rule. We are asking for a broader application of the exclusion we propose here to all relevant SPVs.

13. Multiple, overlapping exposures to an SPV in a single securitization transaction should not be counted more than once in determining the amount of a Covered Company's exposure to the SPV.

In some securitization transactions, the same financial institutions will provide multiple credit and liquidity facilities to a single SPV. The most common structure presenting this issue is an ABCP conduit. Sponsor banks will often provide credit facilities to the ABCP conduit that provide "second loss" credit protection to the conduit's commercial paper holders in the event that the cash flows from underlying transactions financed by the ABCP conduit prove insufficient to timely repay commercial paper. The same sponsor bank will also provide a liquidity facility in the full amount of each individual transaction financed by the ABCP conduit under which the ABCP conduit may sell or otherwise finance its interest in the individual underlying transaction exposure in order to obtain funds to repay commercial paper. In addition, in certain transactions, the sponsor bank may also provide a parallel lending commitment to the underlying transaction-level SPV in the event that the ABCP conduit cannot or elects not to provide funding through the issuance of commercial paper. The maximum credit exposure of a Covered Company providing these multiple facilities is the face amount of the ABCP conduit's commercial paper. The overlapping amount of these exposures should therefore only be counted once in determining all relevant counterparty limits.

The Federal Reserve's risk-based capital rules recognize this principle and do not require duplicative risk-based capital for these overlapping exposures.[17] Our members request that the Proposed Rule be modified in a similar manner to address this issue.

14. Our members intend to continue to treat (i) liquidity facilities provided in ABCP conduit transactions as creating counterparty exposures to the underlying transaction-level SPV and not exposures to the ABCP conduit, and (ii) program-wide credit facilities (other than those which also serve as liquidity facilities) provided to ABCP conduits as counterparty exposures to such conduits.

As discussed above, it is common for sponsor banks to provide multiple credit and liquidity facilities to ABCP conduits. Liquidity facilities provided to ABCP conduits are generally structured either as purchase of risk participations in the exposures of the ABCP conduit to an underlying customer securitization transaction or as non-recourse loan to the ABCP conduit payable only from collections received under the underlying securitization transaction. In either case, when drawn only the assets of the individual customer securitization transaction are available to repay amounts drawn under these facilities and not any other assets of the ABCP conduit. For purposes

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[17] Section 142(f) of the Federal Reserve's risk-based capital rules provides in pertinent part as follows:

(f) *Overlapping exposures.* If a Board-regulated institution has multiple securitization exposures that provide duplicative coverage of the underlying exposures of a securitization (such as when a Board-regulated institution provides a program-wide credit enhancement and multiple pool-specific liquidity facilities to an ABCP program), the Board-regulated institution is not required to hold duplicative risk-based capital against the overlapping position.

of credit underwriting, risk-based capital and the liquidity coverage ratio, the relevant bank treats the exposure as an exposure to the customer SPV, and not as an exposure to the ABCP conduit. The ABCP conduit's sole role in these facilities is to cause collections from the underlying securitization transaction to be applied to repay the liquidity bank.

Our members that sponsor ABCP conduits intend to continue to treat these liquidity facilities as creating credit exposures to the customer SPVs, rather than the ABCP conduit. Our members believe this approach to be consistent with both the provisions and the intent of the Proposed Rule, and the risk-based capital and liquidity coverage ratio treatment of these facilities.[18]

In contrast, our members that sponsor ABCP conduits intend to treat the ABCP conduit as their counterparty for program-wide credit facilities (other than those which also serve as liquidity facilities). As discussed above, these facilities provide "second loss" credit protection to the ABCP conduit's commercial paper holders to the extent that underlying asset cash flows and amounts available from liquidity facilities are insufficient for such purposes. All of the ABCP conduit's assets would be available to repay these facilities.

15. The proposed one-year implementation period for Larger Covered Companies should be extended to a minimum of two years.

The one-year compliance period for Larger Covered Companies set forth in the NPR will not allow these Covered Companies sufficient time to properly implement the provisions of the Proposed Rule. Establishing the operational systems and procedures necessary to implement the SPV provisions of the Proposed Rule that are the subject of this comment letter alone will require significant time and resources. These systems and procedures would also need to be harmonized with the substantial systems and procedures Covered Companies will need to develop to comply with the overall provisions of the Proposed Rule. Our members therefore respectfully request that the implementation period for all Covered Companies be at least two years from the later

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[18] Any other treatment could cause an unnecessary constraint on the amount of securitization credit extended to customers of these Covered Companies. ABCP has for over 30 years been a vital source of low-cost working capital for businesses of all kinds both in the United States and globally, from industrial companies to finance and service companies to governmental entities. The ABCP conduit market is important to the financing of a wide variety of consumer and commercial asset types that allow for increased lending to these important segments of the economy. A decrease in ABCP conduit lending capacity provided by our members will not be easy to replace with on balance sheet bank lending. This is particularly true with regard to the financing of consumer assets. Our members anticipate, in many cases, their customers would face significantly higher financing costs in a contracted ABCP conduit market or by accessing on-balance sheet bank financing. Assets funded through these vehicles include auto loans, commercial loans, trade receivables, credit card receivables, student loans and many other types of financial assets. ABCP financing of corporate America and the global economy remains substantial. For example, approximately $81 billion of automobile loans and leases, $13 billion of student loans, $18 billion of credit card charges, and $41 billion of trade receivables were financed by the U.S. ABCP market as of December 31, 2015. Source: Moody's Investors Service.

(NOTE: This data uses commitment amounts rather than ABCP outstandings. Also, independent (non-bank) ABCP conduits do not disclose asset breakdowns even though the assets are originated and underwritten by Covered Companies that also provide the liquidity facilities to these conduits. Approximately $20 billion of the outstanding financings of these ABCP conduits are not included in the above statistics.)

of the date of issuance of the final counterparty limit rules and the date that relevant reporting forms are finalized.

SFIG appreciates the opportunity to provide the foregoing comments. Should you wish to discuss any matters addressed in this letter further, please contact me at (202) 524-6301 or at richard.johns@sfindustry.org.

Respectfully submitted,

Richard Johns
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